



Press and Information

Court of Justice of the European Union

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Judgment in Case C-650/18  
Hungary v Parliament

## **The Court dismisses Hungary's action against the Parliament resolution triggering the procedure for determining the existence of a clear risk of a serious breach, by a Member State, of the values on which the European Union is founded**

*When calculating the votes cast when that resolution was adopted, the Parliament was right to exclude the taking into account of abstentions*

On 12 September 2018, the European Parliament adopted a resolution<sup>1</sup> on a proposal calling on the Council to determine, pursuant to Article 7(1) TEU,<sup>2</sup> the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded. That declaration triggered the procedure laid down in Article 7 TEU, capable of leading to the suspension of certain rights resulting from EU membership.

Under the fourth paragraph of Article 354 TFEU, which sets out the voting arrangements for the purposes of applying Article 7 TEU, the adoption by the Parliament of the resolution at issue required a two-thirds majority of votes cast, representing the majority of its component Members. In applying its Rules of Procedure which provide that, in calculating whether a text has been adopted or rejected, account is to be taken only of votes cast for and against, except in those cases for which the Treaties lay down a specific majority,<sup>3</sup> the Parliament only took into consideration, in calculating the votes on the resolution in question, the votes in favour and against cast by its Members and excluded abstentions.<sup>4</sup>

Taking the view that, when calculating the votes cast, the Parliament should have taken account of the abstentions, Hungary brought an action under Article 263 TFEU for annulment of that resolution.

The Court, sitting as the Grand Chamber, **dismisses that action**. It finds, in the first place, that the contested resolution may be subject to judicial review under Article 263 TFEU. In the second place, it considers that **MEPs' abstentions do not have to be counted in order to determine whether the majority of two thirds of the votes cast, referred to in Article 354 TFEU, has been reached**.

### Findings of the Court

In the first place, the Court first rules on its jurisdiction to rule on the present action, and then on the admissibility of that action.

First of all, it states that Article 269 TFEU, which provides for a limited possibility of bringing an action for annulment against acts adopted by the European Council or the Council under the procedure referred to in Article 7 TEU, does not exclude the Court's jurisdiction to hear and

<sup>1</sup> Resolution (2017/2131 (INL)) (OJ 2019 C 433, p. 66).

<sup>2</sup> Article 7(1) TEU provides as follows: 'On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2 TEU. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure. The Council shall regularly verify that the grounds on which such a determination was made continue to apply.'

<sup>3</sup> Rule 178(3) of the Rules of Procedure of the Parliament.

<sup>4</sup> The resolution was adopted with 448 votes cast in favour and 197 cast against; 48 MEPs present abstained.

determine the present action. By making that right of action subject to stricter conditions than those imposed by Article 263 TFEU, Article 269 TFEU entails a limitation on the general jurisdiction of the Court of Justice of the European Union to review the legality of acts of the EU institutions and must, therefore, be interpreted narrowly. Furthermore, resolutions of the Parliament, adopted under Article 7(1) TEU, are not referred to in Article 269. Thus, the authors of the Treaties did not intend to exclude an act such as the contested resolution from the general jurisdiction conferred on the Court of Justice of the European Union by Article 263 TFEU. Such an interpretation contributes to the observance of the principle that the European Union is a union based on the rule of law which has established a complete system of legal remedies and procedures designed to enable the Court of Justice of the European Union to review the legality of acts of the EU institutions.

Next, the Court considers that the contested resolution constitutes a challengeable act. It produces binding legal effects from the time of its adoption since, until the Council takes a decision on the action to be taken on it, that resolution has the immediate effect of lifting the prohibition which is imposed on the Member States on taking into consideration or declaring admissible to be examined an asylum application made by a Hungarian national.<sup>5</sup>

Moreover, the contested resolution does not constitute an intermediate measure the legality of which can be challenged only in the event of a dispute concerning the definitive act for which it represents a preparatory step. First, in adopting that resolution, the Parliament did not express a provisional position, even though a subsequent determination by the Council of the existence of a clear risk of a serious breach by a Member State of EU values is subject to the prior approval of the Parliament. Secondly, the resolution at issue produces independent legal effects in so far as, even though the Member State concerned can rely the unlawfulness of that resolution in support of any action for annulment against the Council's subsequent determination, the potential success of that action would not, in any event, make it possible to eliminate all the binding effects of that resolution.

The Court notes, however, that certain specific conditions, laid down in Article 269 TFEU, to which the bringing of an action for annulment against a determination made by the Council, which may be adopted following a reasoned proposal by the Parliament such as the contested resolution, must also apply to an action for annulment brought, pursuant to Article 263 TFEU, against such a reasoned proposal, failing which Article 269 TFEU would be deprived of its practical effect. Thus, the latter action may be brought only by the Member State which is the subject of the reasoned proposal and the grounds for annulment relied on in support of such an action can only be based on infringement of the procedural rules referred to in Article 7 TEU.

In the second place, ruling on the substance, the Court observes that the concept of 'votes cast', contained in the fourth paragraph of Article 354 TFEU is not defined in the Treaties and that that autonomous concept of EU law must be interpreted in accordance with its usual meaning in everyday language. That concept, in its usual sense, covers only the casting of a positive or negative vote on a given proposal, whereas abstention, understood as a refusal to adopt a position, cannot be treated in the same way as a 'vote cast'. Consequently, the **rule laid down in the fourth paragraph of Article 354 TFEU, which requires a majority of votes cast, must be interpreted as precluding the taking into account of abstentions.**

That being so, after recalling that the fourth paragraph of Article 354 TFEU lays down a dual requirement for a majority, that is to say that acts adopted by the Parliament under Article 7(1) TEU must obtain, on the one hand, agreement from two thirds of the votes cast and, on the other hand, the agreement of the majority of MEPs, the Court observes that, in any event, abstentions are taken into account in order to ascertain that the votes in favour represent the majority of MEPs.

Lastly, the Court considers that the exclusion of abstentions in the calculation of votes cast, within the meaning of the fourth paragraph of Article 354 TFEU, is not contrary either to the principle of democracy or to the principle of equal treatment in the light, in particular, of the fact that the MEPs

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<sup>5</sup> In accordance with the 'Sole Article' of Protocol No (24) on asylum for nationals of Member States of the European Union (OJ 2010 C 83, p. 305).

who abstained on the occasion of the vote acted with full knowledge of the facts, since they had been informed in advance that abstentions would not be counted as votes cast.

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**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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